

**United States
Environmental Protection Agency
Region III**

Quaker City Gear Works, Inc.
351 Red Lion Road
P.O. Box 39
Huntingdon Valley, PA 19006

RESPONDENT

) Administrative
) Complaint, Compliance
) Order and Notice of
) Opportunity for Hearing
)
) U.S. EPA Docket Number
) RCRA-III-205
)
) Proceeding under Section
) 9006 of the Resource
) Conservation and Recovery
) Act, as amended, 42 U.S.C.
) Section 6991e

I. INTRODUCTION

This Administrative Complaint, Compliance Order and Notice of Opportunity for Hearing ("Complaint") is issued pursuant to the authority vested in the Administrator of the United States Environmental Protection Agency ("EPA") by Section 9006 of the Solid Waste Disposal Act, commonly referred to as the Resource Conservation and Recovery Act of 1976, as amended by the Hazardous and Solid Waste Amendments of 1984 (collectively referred to hereafter as "RCRA"), 42 U.S.C. Section 6991e, and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits ("Consolidated Rules of Practice"), 40 C.F.R. Part 22. The authority vested in the Administrator of EPA has been delegated to the Regional Administrators and further delegated to the Associate Director, Hazardous Waste Management Division, Office of RCRA Programs, by EPA Delegation No. 8-25, dated March 6, 1986, and November 22, 1989, respectively.

Respondent is hereby notified of EPA's determination that Respondent has violated Section 9003 of RCRA, 42 U.S.C. Section 6991b, and regulations thereunder at 40 C.F.R. Part 280.

II. COMPLAINT

Findings of Fact and Conclusions of Law

A. Respondent is a corporation doing business in the Commonwealth of Pennsylvania, and is a "person" as defined in Section 9001(6) of RCRA, 42 U.S.C. § 6991(6), and 40 C.F.R. § 280.12.

B. Respondent is the "owner" and "operator" of "underground storage tanks" ("USTs"), as those terms are all defined in Section 9001 of RCRA, 42 U.S.C. § 6991 and 40 C.F.R. § 280.12. Such USTs are used to store "regulated substance(s)", as defined in Section 9001(2) of RCRA, 42 U.S.C. § 6991(2) and 40 C.F.R. § 280.12, at Respondent's facility located at 351 Red Lion Road, Huntingdon Valley, Pennsylvania 19006 (the "Facility").

C. On July 12, 1990, EPA sent Respondent a Request for Information Pursuant to Section 9005 of RCRA, 42 U.S.C. § 6991d, requiring Respondent to submit, among other information, specific information describing the USTs at the Facility, including the type or method of internal and exterior protection. This information was required so that EPA could determine whether or not the USTs met either the performance standards in 40 C.F.R. § 280.20 or the upgrading requirements in 40 C.F.R. § 280.21.

D. On July 18, 1990, in response to EPA's Request for Information, Respondent submitted a Notification for Underground Storage Tanks, as required by Section 9002 of RCRA, 42 U.S.C. § 6991a, and 40 C.F.R. § 280.22, identifying one of the USTs at the Facility, Tank No. 1, with an estimated capacity of 3,000 gallons, as being "temporarily out of use". Respondent stated in its Notification that Tank No. 1 is made of steel and that the estimated quantity of (regulated) substance remaining in Tank No. 1 is 3,000 gallons. In its Notification, Respondent also estimated the age of the tank to be 25 years old and the date it was last used to be 1975. However, in response to EPA's request for information about internal and external protection on the UST, Respondent provided no evidence that the tank had been modified to meet either the performance standards in 40 C.F.R. § 280.20 or the upgrading requirements in 40 C.F.R. § 280.21.

E. Regulation 40 C.F.R. § 280.70(c) requires, with exceptions not relevant here, that when an UST system is temporarily closed for more than 12 months, if the UST does not meet either performance standards in 40 C.F.R. § 280.20 or the upgrading requirements in 40 C.F.R. § 280.21, the owner/operator permanently close the UST system at the end of the 12-month period in accordance with 40 C.F.R. §§ 280.71-280.74. This regulation became effective on December 22, 1988.

F. Respondent did not comply with the closure requirements of 40 C.F.R. § 280.70(c) for Tank No. 1 at the Facility by December 22, 1989.

G. Respondent's acts and/or omissions alleged in paragraph F above constitute a violation by Respondent of Section 9003 of RCRA, 42 U.S.C. § 6991b, and 40 C.F.R. § 280.70(c).

III. COMPLIANCE ORDER

Pursuant to Section 9006 of RCRA, 42 U.S.C. § 6991e, Respondent is hereby ordered to:

A. Within thirty (30) days of the effective date of this Compliance Order, comply with the closure requirements of 40 C.F.R. § 280.70(c) with respect to Tank No. 1 at the Facility or modify the tank to meet the requirements of 40 C.F.R. §§ 280.20 or 280.21.

B. Within forty-five (45) days of the effective date of this Compliance Order, submit a report to EPA which documents and certifies Respondent's compliance with the terms of this Compliance Order.

C. Any notice, report, certification, data presentation, or other document submitted by Respondent pursuant to this Compliance Order which discusses, describes, demonstrates, supports any finding or makes any representation concerning Respondent's compliance or noncompliance with any requirement of this Compliance Order shall be certified by a responsible corporate officer of Respondent. A responsible corporate officer means: 1. a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation; or 2. the manager of one or manufacturing, production, or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding \$35 million (in 1987 dollars when the Consumer Price Index was 345.3), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

The certification of the responsible corporate officer required above, shall be in the following form:

I certify that the information contained in or accompanying this [type of submission] is true, accurate, and complete. As to [the/those] identified portions of this [type of submission] for which I cannot personally verify [its/their] accuracy, I certify under penalty of law that this [type of submission] and all attachments were prepared in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant

penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

Signature: _____

Title: _____

D. All documents and reports to be submitted pursuant to this Compliance Order shall be sent to the following persons:

1. Documents to be submitted to EPA shall be sent certified mail, return receipt requested to:

Jack C. Hwang (3HW63)
United States Environmental Protection Agency
Region III
841 Chestnut Building
Philadelphia, Pennsylvania 19107

2. One copy of all documents submitted to EPA shall be sent regular mail to:

Cindy Steele
Pennsylvania Department of Environmental Resources
1875 New Hope Street
Norristown, PA 19401

E. If activities undertaken by Respondent in connection with this Compliance Order or otherwise indicate that a release of a regulated substance from an UST may have occurred, implementation of any corrective action needed to address such release may be required under a separate Administrative Order issued pursuant to Section 9003(h)(4) of RCRA, 42 U.S.C. § 6991b(h)(4).

F. Respondent is hereby notified that failure to comply with any of the terms of this Compliance Order may subject it to the imposition of a civil penalty of up to \$ 25,000.00 for each day of continued noncompliance, pursuant to Section 9006(a)(3) of RCRA, 42 U.S.C. § 6991e(a)(3).

IV. CIVIL PENALTY ASSESSMENT

A. Section 9006(d) of RCRA, 42 U.S.C. § 6991e(d), authorizes EPA to assess a civil penalty of up to \$ 10,000.00 per UST per day of violation of any requirement or standard promulgated under Section 9003 of RCRA, 42 U.S.C. § 6991b.

Pursuant to this authority, EPA proposes the assessment of a civil penalty against Respondent for the following violation:

Failure to complete closure of
Tank No. 1 at the Facility by
December 22, 1989, as required by
40 C.F.R. § 280.70(c)

PROPOSED PENALTY \$4,123

B. Pursuant to Section 9006(c) of RCRA, 42 U.S.C. § 6991e(c), EPA has determined that the proposed penalty is reasonable taking into account the seriousness of the violation alleged in this Complaint and any good faith efforts to comply with the applicable requirements.

V. NOTICE OF OPPORTUNITY TO REQUEST A HEARING

Respondent has the right to request a hearing to contest any matter of law or material fact set forth in the Complaint and Compliance Order, the appropriateness of the proposed penalty, or the terms of the Compliance Order. To request a hearing, Respondent must file a written Answer to the Complaint with the Regional Hearing Clerk (3RC00), EPA Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107, within thirty (30) days of receipt of this Complaint. The Answer should clearly and directly admit, deny or explain each of the factual allegations contained in this Complaint of which the Respondent has any knowledge. Where Respondent has no knowledge of a particular allegation, the Answer should so state. Such a statement is deemed to be a denial of the allegation. The Answer also should contain: (1) a statement of the facts which constitute the grounds of defense; (2) a concise statement of the facts which Respondent intends to place at issue in the hearing; and (3) a request for a hearing, if Respondent desires a hearing. The denial of any material fact or the raising of any affirmative defense shall be construed as a request for a hearing. All material facts not denied in the Answer will be considered as admitted.

If Respondent fails to file a written Answer within thirty (30) days of receipt of this Complaint, such failure shall constitute an admission of all facts alleged in the Complaint and a waiver of Respondent's right to a hearing. Failure to file a written Answer may result in the filing of a Motion for Default Order imposing the penalties herein and ordering compliance with the terms of the Compliance Order without further proceedings.

Any hearing requested by Respondent will be held at a location to be determined at a later date pursuant to regulation 40 C.F.R. § 22.21(d). The hearing will be conducted in

accordance with the provisions of the Administrative Procedure Act, 5 U.S.C. Sections 551-559, and the Consolidated Rules of Practice, 40 C.F.R. Part 22. A copy of these rules is attached.

VI. SETTLEMENT CONFERENCE

EPA encourages settlement of the proceedings at any time after issuance of the Complaint if such settlement is consistent with the provisions and objectives of RCRA. Whether or not a hearing is requested, Respondent may request a settlement conference with the Complainant to discuss the allegations of the Complaint and the amount of the proposed civil penalty. However, a request for a settlement conference does not relieve the Respondent of its responsibility to file a timely Answer.


In the event settlement is reached, its terms shall be expressed in a written Consent Agreement prepared by Complainant, signed by the parties, and incorporated into a Final Order signed by the Regional Administrator. The execution of such a Consent Agreement shall constitute a waiver of Respondent's right to a hearing on any issue of law, fact, discretion or the amount of any penalties agreed to in the Consent Agreement.

The staff attorney assigned to this case is Elizabeth S. Spencer. If you have any questions or wish to arrange an informal settlement conference, please contact Ms. Spencer at (215) 597-4963 prior to the expiration of the thirty (30) day period following receipt of the Complaint. Once again, however, such a request for an informal conference does not relieve Respondent of its responsibility to file an Answer within thirty (30) days following Respondent's receipt of this Complaint.

Please be advised that the Consolidated Rules of Practice prohibit any ex parte discussion of the merits of a case with, among others, the Administrator, Judicial Officer, Regional Administrator, Regional Judicial Officer, or Administrative Law Judge after the Complaint has been issued (40 C.F.R. § 22.08).

U.S. Environmental Protection Agency

Date: 9/29/90



Bruce P. Smith
Associate Director
Hazardous Waste Management Division
Office of RCRA Programs
Region III

CERTIFICATE OF SERVICE

I hereby certify that the original of the foregoing Administrative Complaint, Compliance Order and Notice of Opportunity for Hearing was hand-delivered to the Regional Hearing Clerk, EPA Region III, and that a true and correct copy was sent postage paid, Certified Mail-Return Receipt Requested, to the following person:

Mr. Chester Gadzinski, President
Quaker City Gear Works, Inc.
351 Red Lion Road
Huntingdon Valley, PA 19006

SEP 26 1990

Date

Neil W. Spencer
Elizabeth S. Spencer